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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,153	01/17/2001	David Swisa	00/21263	3699

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/761,153

Applicant(s)

SWISA, DAVID

Examiner

Michael G. Mendoza

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. As to claim 8, it is vague and unclear as to what is meant by tensionably connected.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Lacey 471389.
6. Lacy teaches a device for detecting the flow of gas through at least one opening in an object, the device comprising: an inlet; a chamber having an interior; a pressure displaceable member having an inner face and an outer face; wherein the inlet is associatable with the opening by an attaching member; wherein the chamber is in fluid communication with an outlet configured so as to restrict flow; wherein the pressure displaceable member is removably coupled to a visual indicator of displacement;

wherein the pressure displaceable member is protected by a casing removably attached to the device (see figure).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Lacey in view of Greenberg et al. 4499905.

9. Lacey teaches the device of claim 6 wherein the visual indicator comprises a graduated scale. It should be noted that Lacey fails to teach a movable element. Greenberg et al. teaches a common device with a movable element 100 for indicating volume. Therefore it would have been obvious to one of ordinary skill in the art to modify the device of Lacey to include the moveable element of Greenberg et al. to compare past and present volume amounts (col. 7, lines 52-55).

10. Claim 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Lacey in view of Block et al. 6213120.

11. Lacey teaches the device of claim 1. It should be noted that Lacey fails to teach wherein the pressure displaceable member is operatively associated with a sensor.

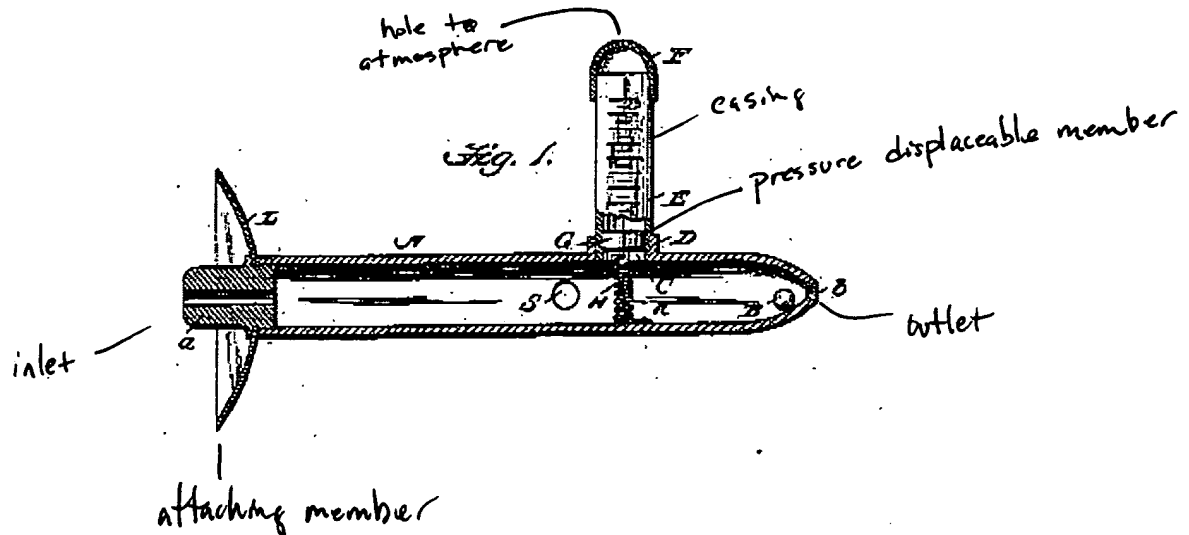
Block et al. teaches a device with a common sensor for sensing respiration. Therefore it would have been obvious to one of ordinary skill in the art to modify the

device of Lacey to include the sensor of Block et al. to indicate a increase in volume of gas caused exhalation (col. 6, lines 63-68).

12. Claim 10 and 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lacey in view of Block et al. in further view of Montgieux 4696307.

13. Lacey/Block teaches the device of claim 9. It should be noted that Lacey/Block fails to teach wherein the indication is any one of a group comprising visible, audible and tactile indications or wherein the indication is transmittable to a remote receptor.

Montgieux teaches a sensor with common indications for detection of breathing rhythm and a remote receptor (col. 3, lines 1-3). Therefore it would have been obvious to one of ordinary skill in the art to modify Lacey/Block to include the indicator of Montgieux to indicate a breathing cycle (col. 2, lines 52-57).



**Contacts**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (703) 305-3285. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

mm

MM  
April 2, 2003



WEILUN LO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700